



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/09461/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 9 March 2020**

**Decision & Reasons Promulgated
On 18 March 2020**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**AZHARUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Representation:

For the Appellant: Mr J Martin, instructed by Londinium solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION BY CONSENT PURSUANT TO RULES 39 AND 40

1. It is agreed that there was a material error of law in the decision of First-tier Tribunal Judge Fenoughty dated 23 September 2019 in light of the Consent Order agreed in the Court of Appeal on 8 January 2019.
2. In light of the finding of fact at paragraph 61 that the appellant had not obtained his ETS certificate by deception the Judge erred in law by failing to give effect to the Consent Order which stated:

“AND UPON the Respondent agreeing that in the event that the First-Tier Tribunal finds in an appeal from the refusal of such a human rights claim that the Appellant did not cheat, the

Respondent will take reasonable steps to put the Appellant into the position he would have been in had the ETS Deception allegation the decision was based upon it, not been made."

3. The Judge, having found that the appellant did not cheat, should have allowed the appeal on the basis that there was a disproportionate interference with the appellant's Article 8 rights so that the Consent Order could have been given effect to.
4. Accordingly, it is ordered that the decision of First-tier Tribunal Judge Fenoughty contains a material error of law and is set aside. The decision will be remade and the appeal is allowed following the agreement of the parties that there is a disproportionate interference with the appellant's Article 8 rights and it will be for the Respondent to decide how to take reasonable steps to put the appellant in the position he would have been in had his leave to remain not been curtailed on the basis of an ETS deception allegation.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
2. The appeal is remade by allowing it by consent on human rights grounds.

Signed

Date 9 March 2020



Upper Tribunal Judge Rintoul